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ORIGINAL

209/08



VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings

OCT 14 2003

Part of
Public Record


Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 34392, New Jersey Rail Carrier LLC-Acquisition and Operation Exemption-Former Columbia Terminals, Kearny, NJ, are the original and ten copies of the Statement of New Jersey Rail Carrier LLC.

Additional copies of this letter and of the Statement are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Edward D. Greenberg, Esq.
Jonathan M. Broder, Esq.
John V. Edwards, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34392

NEW JERSEY RAIL CARRIER LLC
-- ACQUISITION AND OPERATION EXEMPTION --
FORMER COLUMBIA TERMINALS, KEARNY, NJ

STATEMENT
OF
NEW JERSEY RAIL CARRIER LLC

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Attorneys for

NEW JERSEY RAIL CARRIER LLC

Due and dated: October 14, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34392

NEW JERSEY RAIL CARRIER LLC
-- ACQUISITION AND OPERATION EXEMPTION --
FORMER COLUMBIA TERMINALS, KEARNY, NJ

STATEMENT
OF
NEW JERSEY RAIL CARRIER LLC

New Jersey Rail Carrier LLC ("NJRC"), pursuant to the Decisions of the Board, served August 13 and September 11, 2003, submits the following supplemental information demonstrating that its proposed operations qualify it as a railroad to be franchised under the section-10901 class exemption, 49 C.F.R. 1150.31, et seq.:

1. The tracks of NJRC are located in a largely undeveloped area on a peninsula jutting into Newark Bay in south Kearny, New Jersey, a station served by Consolidated Rail Corporation ("Conrail"). Undated maps showing the area, one unmarked, the second outlining the property lines and the third showing the railroad tracks serving the peninsula, are attached as Exhibit 1.
2. The approximately 14-acre site which NJRC has leased from Amcol Realty Co., Inc.,

contains, among other things, a 31,000 square foot warehouse and 13 acres of cleared land, formerly occupied by the chemical tank farm of Columbia Terminals, a facility which received chemicals in bulk by barge and railroad tank cars, stored them in tanks having a 14-million gallon capacity and reloaded them into tank trucks for local distribution. NJRC is located at 65 Central Avenue, the end of Central Avenue, within less than a mile of New Jersey Routes 1 and 9 and the New Jersey Turnpike. Its rail yard is fenced, gated and under video surveillance, with access strictly regulated. The rail yard has adequate fire hydrants and fire fighting equipment on site. Vector control, if necessary, will be handled by a licensed exterminator, when and as the need becomes apparent. A properly trained and equipped Emergency Coordinator will be on site, and all appropriate signage will be installed to maintain a safe and efficient working area.

3. NJRC is actively engaged in promoting the peninsula area as an industrial park and is soliciting sub-tenants for its own site which will tender or receive freight shipments for rail transportation. In that connection, it has been talking with the industrial development departments of other railroads to encourage them to publicize the availability of the site as an intermodal transfer facility.

4. NJRC intends to sub-let five acres adjacent to one of its tracks to an affiliated company, New Jersey Transloading Company LLC ("NJTC")¹, which, among other things, using heavy-duty container lifting equipment, will transfer fully-enclosed containerized demolition and construction debris from the trucks of authorized hauling companies to temporary storage and from temporary storage to railroad flat cars for rail transportation to various land fills throughout

¹ The principals of NJRC, who similarly will be the principals of NJTC, have held off forming the company only because of the uncertainty occasioned by the stay of the effective date of NJRC's Verified Notice of Exemption.

the country. The relationship between NJRC and NJTC will be that of independent contractors. NJRC will have no financial interest in the containers or their contents being transported for NJTC, and NJRC will not give any preference to the shipments tendered by NJTC.

5. A second shipper, Mid Island Aggregates, proposes to bring in several railroad carloads of aggregates, including stone and sand, twice a week, which will be off loaded by NJTC for temporary ground storage on one acre sub-let from NJRC and served by one of its tracks, to be subsequently loaded by NJTC into trucks for local delivery to ready-mix cement companies and other consumers.

6. NJRC currently is negotiating with one or more brokers of lumber to sub-lease a plot adjacent to one of NJRC's tracks for the off loading by NJTC and the temporary storage in the NJRC warehouse on the premises of carloads of lumber pending NJTC's loading of trucks for delivery to local lumber yards or building construction sites.

7. NJRC will hold itself out to serve any and all transloaders or other industries which can be encouraged to establish their places of business in the peninsula area. It will move cars between Conrail and shippers and receivers of rail freight shipments and will switch railroad cars between the sidings in the peninsula area as will be required to permit their loading and unloading in an efficient and timely manner. Whether NJRC will be compensated for the terminal switching by allowances received from Conrail or charges assessed the tenants of the various properties remains to be determined.

8. NJRC will lease whatever locomotives and, if necessary, such cars as will be required for it to render adequate service to its customers; it has held off doing so only because of the uncertainty occasioned by the stay of the effective date of its Verified Notice of Exemption.

9. In this regard, NJRC will be like the several railroads which the Board and its predecessor, the Interstate Commerce Commission, have authorized to render service within industrial parks. See, STB Finance Docket No. 34328, Pennsylvania Southwestern Railroad, Inc.–Lease and Operation Exemption–J&L Special Steel, LLC, served April 24, 2003; STB Finance Docket No. 34145, Bulkmatic Railroad Corporation–Acquisition and Operation Exemption–Bulkmatic Transport Company, served November 19, 2002; STB Finance Docket No. 33414, Penn-Jersey Rail Lines, Inc.–Acquisition and Operation Exemption–WMI Properties, Inc., served June 24, 1997; Finance Docket No. 32104, Burns Harbor Shortline Railroad Company–Acquisition and Operation Exemption–Indiana Port Commission, served August 13, 1992.

10. At the same time, NJRC does not wish to insert itself between Conrail and the industries situated on the south Kearny peninsula. Rather, it would like to become a switching carrier for Conrail, very much, as we understand it, Conrail utilizes Ashland Railway, Inc., at Lakeland, NJ, Belvidere & Delaware River Railway at Phillipsburg, NJ, and Port Jersey Railroad Company at Greenville, NJ. Indeed, such relationships, between short line railroads and their trunk line connections which utilize the short line railroads to perform their terminal switching for the trunk lines, are widespread in the industry, as, for example, that which exists between the Cloquet Terminal Railroad Company, Inc., and The Burlington Northern and Santa Fe Railway Company at Cloquet, MN, between the Roscoe, Snyder & Pacific Railway Company and the Union Pacific Railroad Company at Roscoe, TX, and between Aliquippa Southern Railroad Company and CSX Transportation, Inc., at Aliquippa, PA.

11. NJRC does not wish to suggest that it has reached any agreement with Conrail to

become its switching carrier serving the industries situated on the south Kearny peninsula; however, that is a relationship which as a short line railroad it aspires to establish.

12. The New Jersey Department of Environmental Protection ("NJDEP") in its letter pleading, filed August 12, 2003, expressed its misgivings that NJRC was organized to avail itself of the preemption provision of 49 U.S.C. 109501(b) to circumvent the laws and regulations administered by the agency. Nothing could be further from the truth. To the contrary, NJRC and its affiliate, NJTC, will be in full compliance with NJDEP's requirements.

13. Initially, NJRC would note that the site it occupies is situated in an area zoned for industry in or near which no residences are located. There are no schools, hospitals or shopping centers between the approaches to and from New Jersey Routes 1 and 9 and the New Jersey Turnpike and NJRC's facility. Adjacent to NJRC's site are the Kearny Department of Public Works Sewage Treatment Plant and Composting Facility, a chemical distribution warehouse company, a large industrial park and an abandoned parcel of land.

14. Indeed, the New Jersey Department of Transportation has recognized the value of the area as a location for intermodal transfers by including it in its PORTWAY project. Attached as Exhibit 2 is a brief description of the PORTWAY project retrieved from the Department's web page, which, among other things, identifies the Central Avenue and Route 1&9T interchange in Kearny as a future site for development. That, of course, is practically across the street from NJRC, and NJRC anticipates that it can only experience growth from the nearby location of the PORTWAY project.

15. As already noted, NJRC anticipates receiving railroad-approved fully-enclosed containers of demolition and construction debris trucked only from licensed transfer stations by

properly registered and licensed hauling companies, which must schedule the arrival of their trucks so as to avoid any queuing of vehicles on adjacent streets or roadways. Neither NJRC, nor its affiliate, NJTC, which will perform the actual unloading of the trucks and loading of the rail cars, will engage in any form of solid waste tipping, processing, sorting, compacting or removing of solid waste from a container to be transferred to another container or vehicle. At no time during the proposed operation will the containers be opened or allowed to leak. Non-putrescible waste will at no time be on the site for more than ten days. Putrescible solid waste will at no time be on the site for more than 72 hours.

16. NJRC, as its affiliate, NJTC, will comply with all District Plan Solid Waste Flow Control Provisions. The companies will accept only such material as has been processed and containerized at a licensed transfer station. The material will arrive in a fully-enclosed containers and never leave the containers. The containers will be off loaded by NJTC, temporarily held in storage on property leased from NJRC and then loaded by NJTC unto railroad cars for rail transportation to various land fills around the country. NJRC and NJTC will work in conjunction with all government agencies to move waste legally, efficiently, safely and economically by rail, while reducing the amount of truck traffic on the State's highways.

17. With reference to the handling of solid waste, NJDEP has indicated in prior writings its belief that intermodal container facilities will pose little environmental problems or public health threats, because the waste will be containerized and not be removed from the containers. This is consistent with the preamble to the proposed regulations which NJDEP has circulated for comments in which NJDEP states that the possibility for environmental damage is minimal. 27 N.J.R. 802 (March 6, 1995). It is probably for this reason that NJDEP has proposed a

substantially less burdensome process for the review and approval of intermodal operations than the requirements that apply to the typical open air transfer stations.

18. NJTC will be utilizing machinery and equipment that is consistent with that which is used in the area. Every step will be taken to insure that the machinery and equipment will be in compliance with NJDEP's requirements and to safeguard that noise and air pollution will not be a matter of concern

19. NJRC has and will continue to work with NJDEP so as to be in compliance with all of its regulations. NJRC had originally contacted NJDEP and submitted a formal operational plan in May of 2003.² Since May, counsel for NJRC has had several conversations with the agency's representatives and has scheduled a meeting for October 16, 2003 with the agency's representatives to be held in the Office of the New Jersey Attorney General in order to work in conjunction with the State in going forward with NJRC's plans for an intermodal facility.

20. NJRC has worked, and will continue to work, with NJDEP to safeguard that, insofar as NJRC may be considered by that agency to be serving as an intermodal container facility, it will be a model one operated in full compliance with all of NJDEP's regulations. NJRC and its principals state unequivocally that they have no intention now, or in the future, to operate a transfer station which does not have the express approval of NJDEP. Irrespective of whether a railroad may avail itself of the preemption provision of 49 U.S.C. 10501(b) to avoid NJDEP's permitting requirements, it is the intention of NJRC to waive in writing any exemption from the transfer

² Neither Mr. Anthony Rizzo, Jr.'s letter of May 27, 2003, nor Mr. Darren Rizzo's letter of June 12, 2003, to Mr. Anthony Fontana, Chief of the NJDEP's Bureau of Hazardous Waste and Transfer Facilities, copies of which previously were filed with the Board, adequately disclosed and discussed that the rail transportation services are to be rendered by NJRC and the transloading operations are to be performed by its affiliate, NJTC.

station rules and regulations and to submit to NJDEP's jurisdiction in connection with the permitting of transfer stations.

21. As already noted, Columbia Terminals, the prior occupant of the property leased by NJRC, for approximately the past fifty years operated a chemical tank farm with a capacity of 14 million gallons and, hence, was the consignee of large numbers of railroad tank cars of chemicals and the shipper of an even greater number of tank trucks of chemicals. The anticipated transportation operations of NJRC are expected to be not nearly as great. The operations of NJRC will not result in any diversion of freight shipments from rail to truck; to the contrary, its proposed operations will encourage the movement of freight by rail, with the only over the road operations being local. The increased truck traffic will not be more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment. In other words, the authorization which NJRC seeks to become a railroad will not result in significant changes in carrier operations (i.e., changes that do not exceed the thresholds established in section 1105.7(e)(4) or(5)), and, accordingly, pursuant to 49 C.F.R. 1105.5(c)(2), no environmental documentation need be prepared. NJRC will not alter or remove any structures which are fifty years old or older, and, hence, not historic report is called for.

22. Finally, NJDEP questioned whether Mr. Anthony Rizzo, who pled guilty to violations of the State of New Jersey's Solid Waste Utility Control Act and was permanently debarred from further involvement in the solid waste industry, has any connection with NJRC. The answer is that he does not. NJRC, as its affiliate NJTC, are controlled solely by Mr. Anthony Rizzo, Jr., and his brother, Mr. Darren Rizzo, both of whom are upstanding and completely law-abiding citizens and residents of New Jersey.

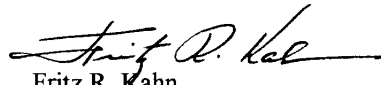
WHEREFORE, New Jersey Rail Carrier LLC asks that the stay be vacated and that its
Verified Notice of Exemption be allowed to become effective.

Respectfully submitted,

NEW JERSEY RAIL CARRIER LLC

By its attorneys,

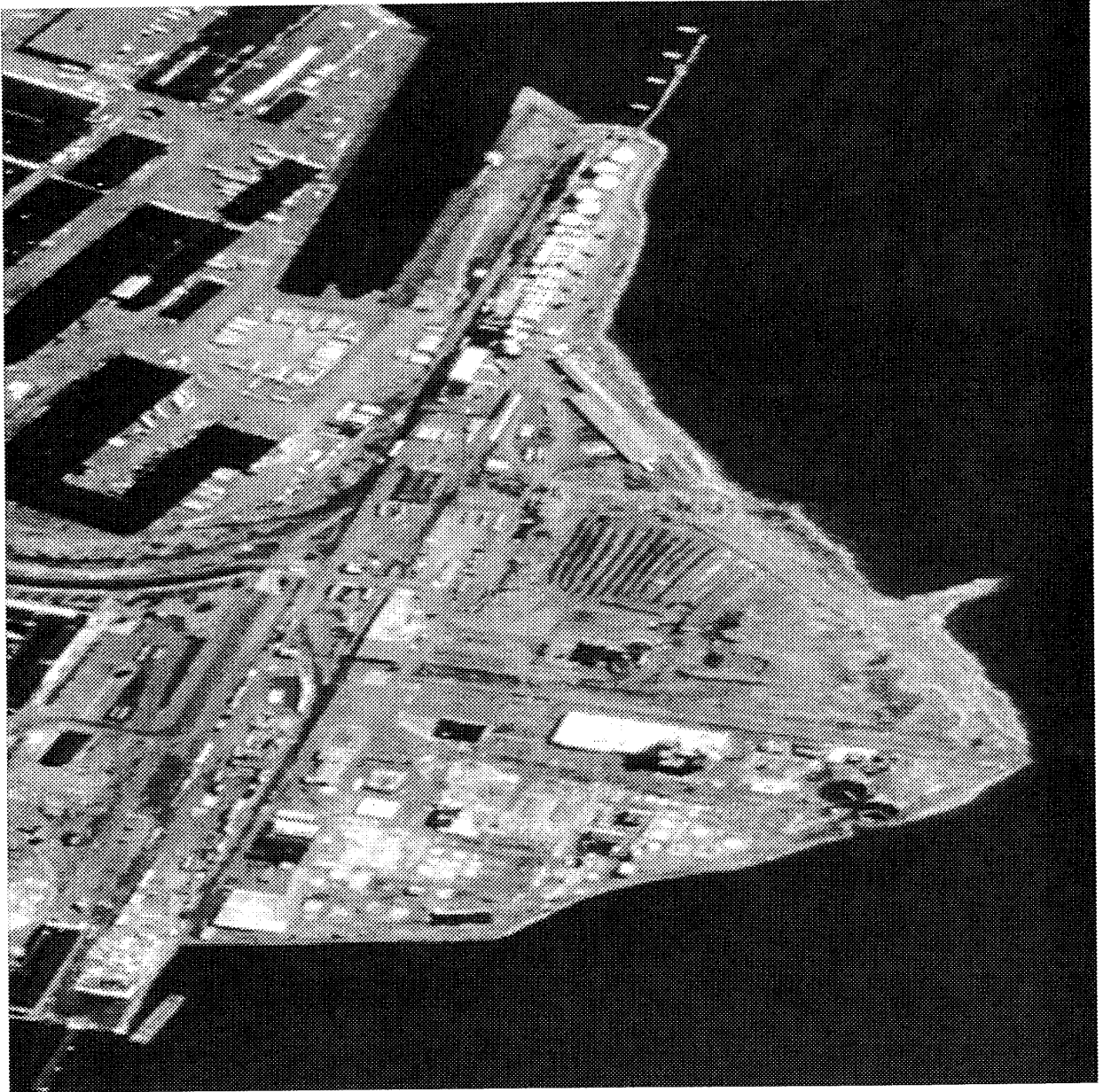
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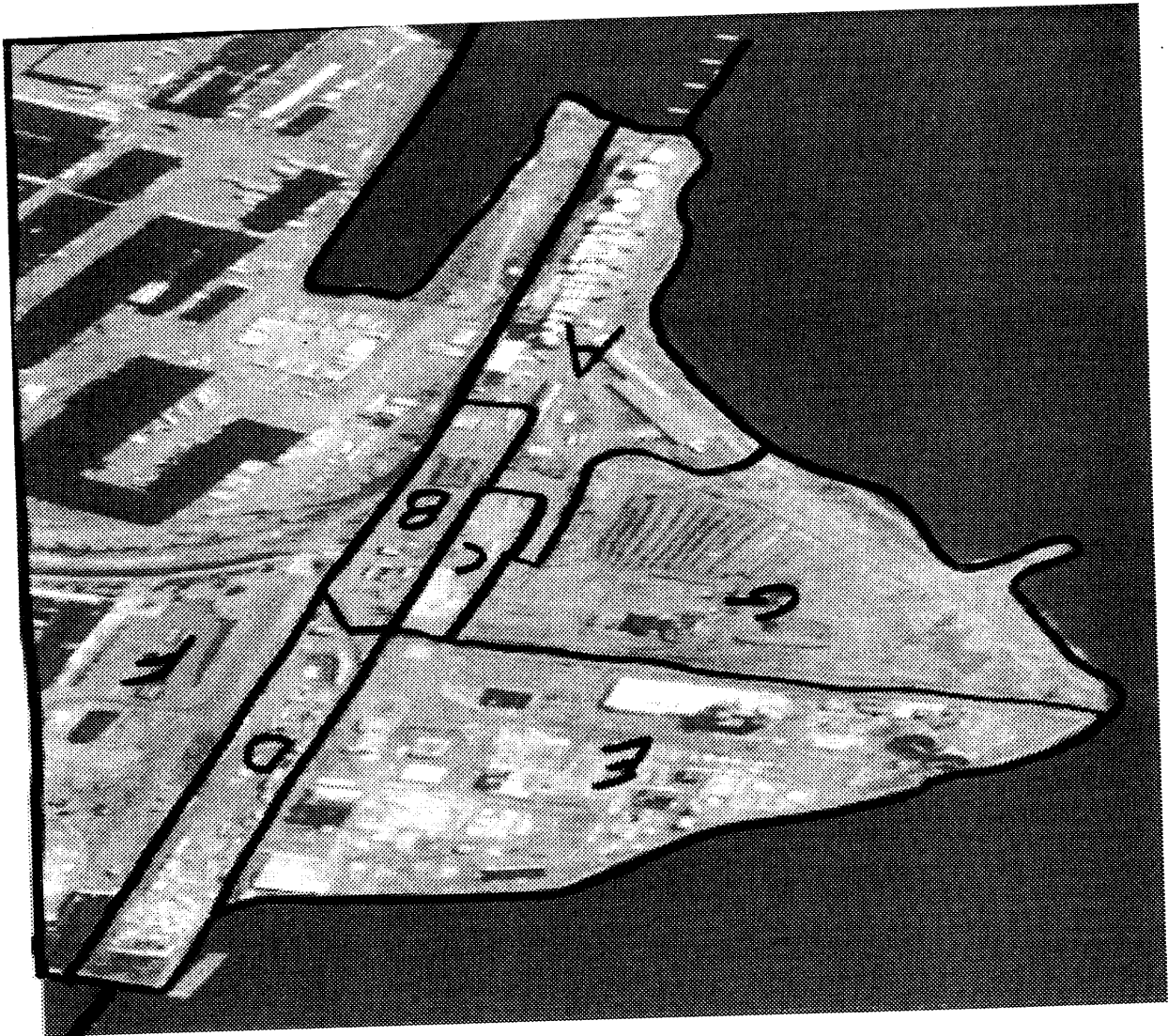
Due and dated: October 14, 2003

EXHIBIT 1

Peninsula



Penninsula Breakdown. Please note this is just the peninsula, the industrial area is **not** limited to the peninsula. A - NJRC. B - independently owned property C- independently owned property D- independently owned property E- independently owned property F- Large Industrial Park G- Kearny water treatment plant and composting yard.



Existing Rail Lines

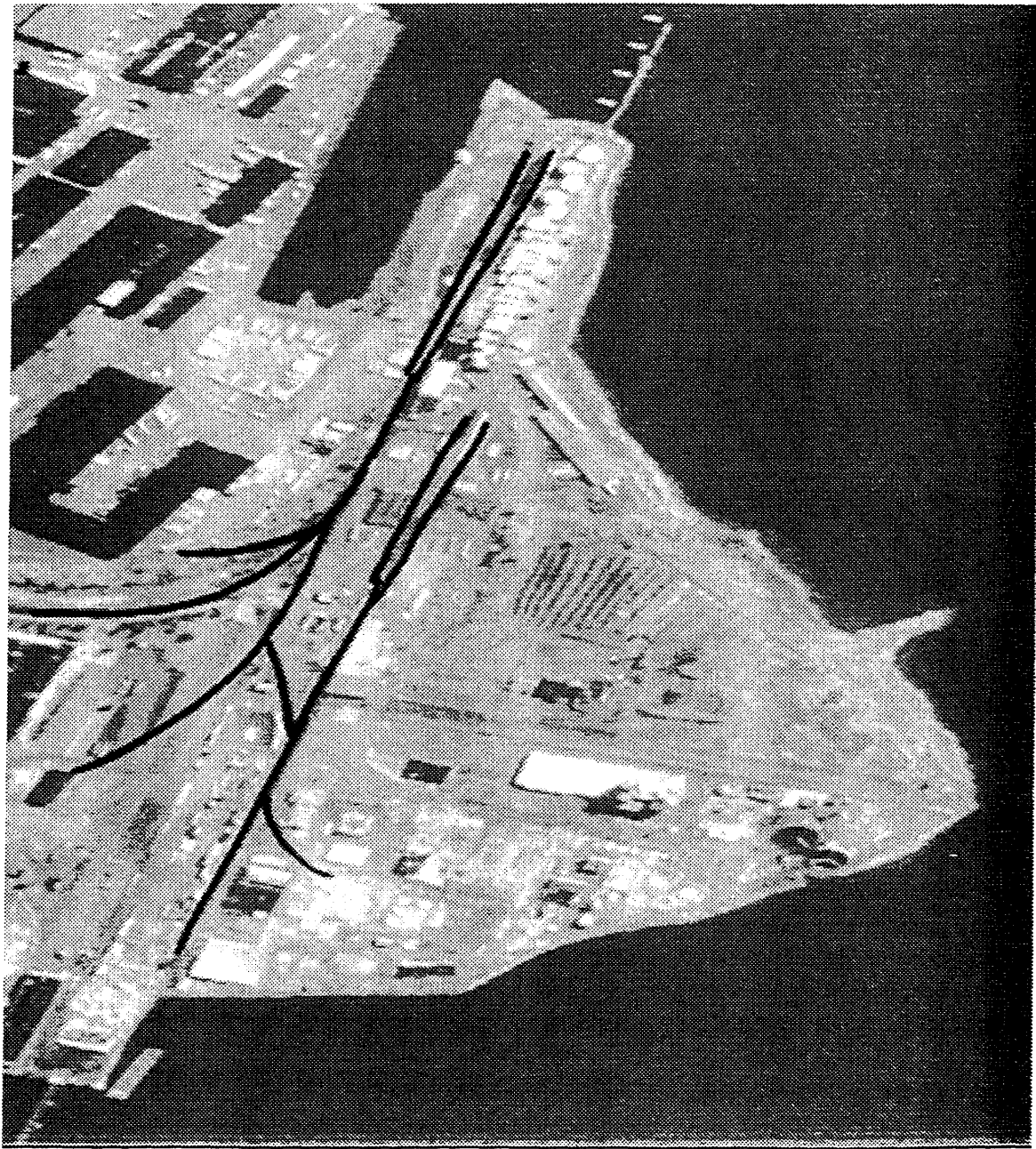


EXHIBIT 2

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PORTWAY

In the Works**Overview**

Projects

Extensions Study

Useful Links

Overview**What is Portway?**

Portway is a series of 11 independent NJDOT projects that will improve access to and between the Newark-Elizabeth Air/Seaport Complex, intermodal rail facilities, trucking and warehousing/ transfer facilities and the regional surface transportation system. These facilities and their access routes are the front door to global and domestic commerce for New Jersey and the greater metropolitan New York region. The projects are located in the counties of Union, Essex, Hudson and Bergen and the municipalities of Elizabeth, Newark, Bayonne, Jersey City, Kearny, Secaucus, North Bergen, Little Ferry and Ridgefield Park.

Portway projects will:

- 1 Increase safety and support seamless intermodal and roadway connections.
- 1 Relieve current high levels of congestion and meet growing future demands resulting from increased activity at port facilities, rail yards and distribution centers.
- 1 Promote economic development, create jobs and improve the environment.
- 1 Improve access to brownfields sites and facilitate their re-use as value-added processing centers and other goods movement logistics purposes.

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Department of Transportation
P.O. Box 600
Trenton, NJ 08625-0600

Last Updated: February 4, 2003



PORTWAY

In the Works

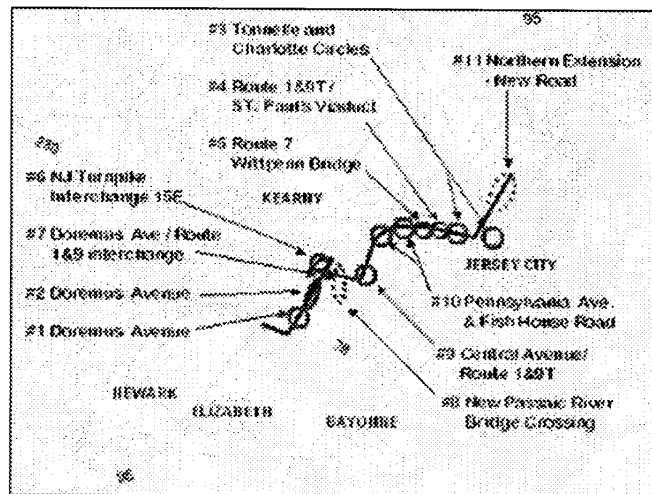
[Overview](#)

Projects

[Extensions Study](#)

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Projects



Projects under construction

1. Doremus Avenue from south of Port Street to north of Wilson Avenue; Newark.
2. Doremus Avenue from north of Wilson Avenue to north of Raymond Boulevard; Newark.
3. Charlotte & Tonnelle Circles; Jersey City

Projects in Final Design or Final Scope Development

4. Route 189T (25) St. Paul's Viaduct Replacement; Jersey City.
5. Route 7 WittPenn Bridge; Kearney, Jersey City.

Projects in Feasibility Assessment

6. New NJ Turnpike interchange; Newark.
7. Doremus Avenue Interchange with Route 189 Truck; Newark
8. New Passaic River Bridge Crossing; Kearney; Newark.
9. Central Avenue and Route 189T interchange; Kearney.
10. Pennsylvania Avenue and Fish House Road; Kearney.
11. Northern Extension from St. Pauls Avenue to Secaucus Road; Jersey City.



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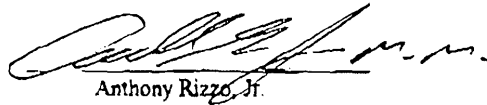
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Department of Transportation
P.O. Box 600
Trenton, NJ 08625-0600

Last Updated: February 21, 2003

VERIFICATION

I, Anthony Rizzo, Jr., Managing Member of New Jersey Rail Carrier LLC, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of New Jersey Rail Carrier LLC and its affiliate, New Jersey Transloading Company LLC. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

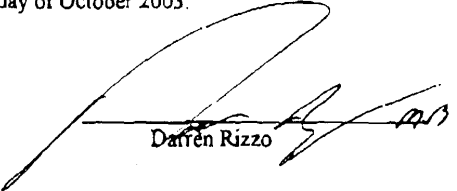
Dated at Kearny, NJ, this 13th day of October 2003.


Anthony Rizzo, Jr.

VERIFICATION

I, Darren Rizzo, Managing Member of New Jersey Rail Carrier LLC, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of New Jersey Rail Carrier LLC and its affiliate, New Jersey Transloading Company LLC. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Kearny, NJ, this 13th day of October 2003.

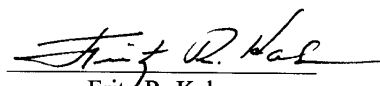


Darren Rizzo

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Statement of New Jersey Rail Carrier LLC upon each of the parties by arranging to have a copy hand delivered by messenger to Edward D. Greenberg, Esq., counsel for NJDEP, and copies sent by UPS Next Day Air to Jonathan M. Broder, Esq., counsel for Conrail, and John V. Edwards, Esq., counsel for NS.

Dated at Washington, DC, this 14th day of October 2003.


Fritz R. Kahn